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State of Utah v. Gerald Oakley Huggins : Brief of Appellant

THE SUPREME C
THE STATE OF

OF UTAH,
Plaintiff and Respondent

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LD OAKLEY HUGGINS,
Defendant and Appel

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Appeal from Ju
Judicial District C
Honorable James F. W

L. G.
Ogden, U
Attorn

GREEN
General
for Respondent

BRIEF

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Cases Cited

IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH,
Plaintiff and Respondent,

— vs. —

GERALD OAKLEY HUGGINS,
Defendant and Appellant.

Case No. 10545

BRIEF OF APPELLANT

STATEMENT OF NATURE OF CASE

The appellant, Gerald Oakley Huggins, was convicted in the Second Judicial District Court of Weber County, State of Utah, of violation of Section 76-7-9, Utah Code Annotated, 1953, alleging that he did wilfully and unlawfully take indecent liberties with the persons of two female children, age six and seven years, without intending or attempting to commit the crime of rape upon said children.

DISPOSITION IN THE LOWER COURT

Upon the trial of the aforesaid case, the defendant was convicted by jury trial and sentenced by the court to serve an indeterminate term in the Utah State Prison.

RELIEF SOUGHT ON APPEAL

The appellant respectfully requests that the conviction be set aside and the said defendant discharged, or in the alternative a new trial be granted.

STATEMENT OF FACTS

The evidence indicated that the defendant, Gerald Oakley Huggins, is a married man who on the date of the alleged offense resided with his wife and a small daughter, in Ogden City, Utah.

The alleged victims in this matter resided with their parents next door to the home of the defendant (R. 15).

The testimony of the mother indicated that while giving her daughters a bath on the 10th day of July, 1965, she noticed a redness in the area of the sexual parts of the girls and questioned them concerning it (R. 20). That the girls then informed her that the defendant had taken them into the bedroom of his home a short time prior to the 10th of July, 1965, and had placed his hands on their sexual parts (R. 37).

There was also testimony by the mother that an older brother of the girls, Mike, age 13, had molested the girls in the past and that the mother had told the girls that if he did this again he would have to go away and live elsewhere (R. 23, 26).

On page 36 of the transcript the mother of the children was allowed by the Court, over objection, to relate

a portion of conversation with the alleged victims in which the mother testified a third girl, Garthia Walton, age 10 years, is alleged to have told the little girls involved here, that the defendant had molested her as well (R. 36). The Court, in denying the defendant's Motion for Mistrial, was informed by the District Attorney, that the charge of indecent liberties, involving the Walton girl, had been filed the morning of the trial (R. 40). Notwithstanding the fact that the evidence is clear that the State knew all about the alleged offense involving the 10-year old Walton girl from the very inception of the investigations of this case.

The little girls then testified that the defendant had molested them, and Garthia Walton was sworn and, over objection, testified that the defendant had molested her in substantially the same manner as the two small girls who were the subject of this prosecution.

The defendant then took the stand and denied any knowledge of the incident whatsoever.

ARGUMENT

POINT I

THE TRIAL COURT COMMITTED ERROR IN ALLOWING THE PROSECUTION TO OFFER EVIDENCE OF THE COMMISSION OF OTHER CRIMES BY THE DEFENDANT.

The problem of when and under what circumstances the prosecution will be allowed to introduce evidence of other criminal acts is one that has received a great deal

of attention from the courts. The general rule is set forth in 22A, C.J.S. at Section 682 as follows:

> "The general rule is that evidence that accused has committed another crime independent, and unconnected, with the one on trial is inadmissible; it is not competent to prove one crime by proving another."

In discussing the various reasons for the rule it was pointed out that in many incidences evidence of an unconnected crime would tend to influence the jury adversely, and that said influencing of the jury would usually outweigh any probative worth that the evidence may have. It was also pointed out that a defendant is entitled to be tried upon one case at a time and that to force him to defend, in effect, several allegations of criminal conduct at once was placing an unfair burden upon the defendant.

It is true there are many exceptions to the general rule stated above, notwithstanding the existence of these various exceptions, the general rule denying admission of evidence of other offenses should be strictly enforced in all cases where applicable, because of the prejudice and injustice of such evidence, and should not be departed from except under conditions which clearly justify such a departure. This rule is set forth in numerous cases as exemplified by the following: *People* v. *Epping,* 162 N.E. 2d 366, 17 Ill., 2d 337 (1959); *State* v. *Frizell,* 295 P. 658, 132 Kan. 261, (1931); *State* v. *Eder,* 78 P. N23, 36 Wash. 42, (1904).

In the cas of *State* v. *Lyle,* 118 S.E. 803, 125 S.C. 406, (1923), the Court stated as follows:

> "Evidence of another offense coming within one of the exceptions 'is yet inadmissible, unless it may be considered reasonably necessary in the light of all the facts of the particular case to accomplish the purpose for which it is offered.' "

In the recent case of *State* v. *Kazda,* 38 P. 2d 407, 14 Utah 2d 266, (1963), the Court reversed and remanded for a new trial. A case wherein a defendant was examined by the prosecutor concerning a conversation that he had with an FBI agent that related to other offenses not connected with the one upon which he was being tried. The Court in reversing stated as follows:

> "We deem the foregoing to constitute prejudicial error. It implied that the defendant was implicated in other crimes, none of them proven, and could have no other effect than to degrade the defendant and to give to the jury the impression that he had a propensity for crime."

Again, our own Supreme Court in the case of *State* v. *Dickson,* 361 P. 2d 412, 12 Utah 2d 8 (1961), in reversing and remanding for a new trial a case involving the questioning of a defendant concerning a prior alleged offense of robbery, the Court stated with approval the general rule as follows:

> "The universally accepted general rule is that such evidence is not admissible if its effect is merely to disgrace the defendant or show his propensity to commit crime. However, where evidence has a special relevancy to prove the crime of which the defendant stands charge, it may be

allowed for that purpose; and the fact that it shows another crime will not render the evidence inadmissible."

The Court further went on to state in the *State v. Dickson*:

> "It is a sound and salutory policy of the law to indulge everyone, including convicted felons, with the presumption of innocence, and to require the State to obtain and present sufficient credible evidence to convince the jury of the defendant's guilt of the crime charged beyond a reasonable doubt. If this were not so, serious and perhaps insuperable obstacles to reformation and rehabilitation would exist for a man who had once acquired a bad reputation."

In the Utah Supreme Court, in the case of *State v. Winget*, 310 P. 2d 738, 6 Utah 2d 243, (1947) the court was faced with a similar type situation as the instant case. In this case a defendant was charged with the crime of rape. The girl involved was eight years of age. At the trial the Court, over the objections of counsel, allowed a 17-year-old step-daughter to testify that some years earlier the defendant had raped her while she resided in his home. The Court stated the question as follows:

> "The sole question confronting us is whether the evidence of similar sex acts with persons other than the complaining witness is admissable. Unless we were inclined to reverse our own decision in the strikingly similar case of State v. Williams, 36 Utah, 273, 103 P. 250, which we feel constrained not to do, such evidence is inadmissible in this state."

In a concurring opinion in the *Winget Case,* the Hon. Wade, Justice, reviewed the prior cases of the Utah court and summarized the rules as follows:

> "The following is a brief review of the rules above referred to: Except where otherwise provided by rules of evidence all relevant evidence is admissible. Relevant evidence means evidence having a tendency in reason to prove or disprove any material facts in issue. However, evidence that a person committed a crime upon one occasion is inadmissible to prove his disposition, bad character, or propensity to commit crime as the basis for an inference that he committed the crime for which he is on trial, but such evidence when relevant is admissible to prove some other material fact including the absence of mistake or accident, motive, opportunity, intent, preparation, plan, knowledge or identity. The reason for excluding such evidence is that the danger of prejudice outweighs the probative value of such evidence. This is said to be an application of the rule against the initial introduction of evidence of bad character by the prosecution. However, it is generally recognized that the Judge may in his discretion exclude such evidence if he finds that its probative value is substantially outweighed by the risk that the admission will cause undue consumption of time, create substantial danger of undue prejudice, or of confusing the issues, or misleading the jury or unfairly and harmfully surprise the defendant who has not had reasonable opportunity to anticipate that such evidence would be offered.
>
> "In applying these rules to the facts of this case it is clear that the evidence of previous sexual relations between the defendant and his stepdaughter has probative value to show the degraded character, disposition and propensity to commit sexual crime and in particular the crime

there charged. If that is the only material fact in this case which such evidence tends to prove it is inadmissible because of the exclusion area exception to the general rule that all relevant evidence is admissible, to the effect that evidence of another crime is inadmissible if it only shows bad character, disposition or propensity to commit crime generally or the crime in particular."

Most of the Utah cases as well as most cases from other jurisdictions involving the question herein, are cases in which the defendant was cross-examined concerning his prior acts of alleged misconduct. In the instant case the State of Utah was asked by the Court at the outset of the trial to indicate who its witnesses would be. The Sate did not list the name of Garthia Walton as a prospective witness (R. 41). The first indication that her name was involved in any manner occurred during the examination of the mother of the children (R. 36). The additional fact that the State of Utah, although it had taken the statement of Garthia Walton at the same time that it had taken the statements of the Nelson girls, in July, of 1965 (R. 105). The State, by the District Attorney, asked the mother of Garthia Walton to sign a Complaint charging the defendant with a similar crime on the very morning that the instant case came to trial (R. 106). The defendant feels that it is significant the timing of the State as to when it decided to prosecute the defendant on the Walton case. That the timing of the prosecution, the failure of the State to divulge Garthia Walton, and the manner in which her testimony was elicited clearly indicate an intent on the part of the State to show bad

character on the part of the defendant and a propensity to commit this type of crime.

In connection with the allowing of testimony of a similar act of misconduct with a separate person, the Court made the following statement to the jury (R. 81):

> THE COURT: Are you going to call the Walton girl?
>
> DISTRICT ATTORNEY: Yes, your Honor, I intend to call the Walton girl.
>
> THE COURT: The jury is instructed as follows. It is my belief that the State claims that they will present another witness, a little Walton girl, they say that will allege some misconduct towards her by this defendant of a similar to that to which he is here charged with. You are instructed that he is not here on trial for assault upon the Walton girl. There is another charge, I believe, filed regarding the Walton girl.
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> MR. BINGHAM: Your Honor, I will object to this on the part of the Court and ask at this time for a mistrial.
>
> THE COURT: Whether there is or isn't, I don't know, but that is not the trial that is taking place today. The trial today involves, alleges as to the two Nelson girls only, so you cannot consider the Walton girl's testimony as proof of this offense. You can receive it for a bearing, if any it has on the question of motive of any person who commits this type of offense here on trial, if you believe this offense is the type of offense that would be committed by only the smallest minority of the population because it is of an unusual nature. In other words something that only an unusual person would be motivated to do. You cannot convict of these offenses because you think he may

have committed another offense. On the issue of motivation and make-up of a person who would commit the type of offense charged here, if you find it to be a highly different type of thing for that purpose only you can hear the Walton girl. All right.

It is the contention of the defendant that the Court at this point instructed the jury that the Walton girl's testimony was to be utilized by them for two purposes. First, they were to listen to the Walton girl's testimony of a similar occurrence and determine, with its aid, whether or not the child molesting was an unusual type of occurrence and an occurrence that only a minority of persons would commit. Secondly, instruction by the Court told the jury they could consider the Walton girl's testimony as an aid in determining motivation.

It is the contention of the defendant that this instruction by the Court was in effect an instruction that the jury was to use the evidence of the Walton girl to determine if the defendant is or was a person of a depraved nature.

There is no allegation that the Walton girl's testimony was to aid in establishing the absence of mistake or accident, opportunity, intent, preparation, plan, knowledge or identity. It could not be contended by the State that the evidence was offered to impeach the credibility of this defendant, he had not taken the stand at this time. The attempt by the Sate to show an unrelated prior act, between the defendant and a party not listed in the Complaint, forced upon the defendant the necessity

of attempting to defend himself in connection with accusations involving three children. Needless to say he had no opportunity to have a Preliminary Hearing on the Walton girl charge, prior to being forced to defend himself in connection therewith.

CONCLUSION

In conclusion the Court committed error in allowing the evidence of the Walton girl to be submitted to the jury and in the instruction of the Court to the jury in connection therewith.

Respectfully submitted,

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